UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,493	09/29/2004	Takenobu Arima	L9289.04158	5357

24257 7590 03/03/2008		

STEVENS DAVIS MILLER & MOSHER, LLP
1615 L STREET, NW
SUITE 850
WASHINGTON, DC 20036

EXAMINER
BROOKS, SHANNON

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
03/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 January 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.
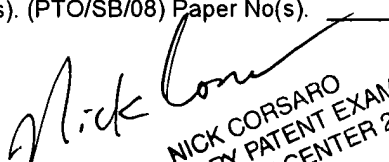
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See continuation sheet..</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

NICK CORSARO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Stolyar is discussing a system with a scheduling apparatus that creates a schedule for a base station that transmits packets to one or more communications partners; the scheduling appartus contains a detection section that detects changes in transmission path conditions; the scheduling section transmits packets earlier to a communication partner in a path whose conditions change rapidly, and later to a communication partner whose path condition changes slowly. For these reasons, Stolyar reads on the argued limitations. The Applicant argues that Stolyar discloses scheduling the transmission of data packets to communication partners according to a respective weight, c_i, that characterizes the quality of transmission paths to the communication partners, and that the weight, c_i, represents a transmission power required to transmit data to a respective partner along the paths. However, Stolyar actually discusses c_i, as a prior art channel condition weight that does not consider significant fluctuations in channel conditions (Pg. 1, Art Background). Further, Stolyar states a need for a channel condition weight that will provide the ability to queue packets with stability in the presence of such fluctuations. Therefore, Stolyar introduces a weighted delay variable, $c_i(t)$, that takes into account an explicit time dependence for fast and slow fading over transmission paths and computes and applies it to each queue (Col. 4, lines 38-64). Applicant argues further that Stoyler discloses giving a higher transmission priority to communication partners whose transmission paths are poor as determined by the respective weights, c_i. However, as previously stated, Stayler introduces a weighted delay variable, $c_i(t)$, that takes into account an explicit time dependence for fast and slow fading time effects over transmission paths and computes and applies it to each packet queue. Stoyler does not use c_i. The Applicant argues that the weighted parameter, $c_i(t)$, does not indicate whether fading effects of a channel occur fast or slow. However, Stolyar discusses exemplary scheduling intervals capable of substantially following short time scale and long time scale effects (Col. 4, lines 47-64). The Applicant argues that there is no difference between c_i and $c_i(t)$. However, Stolyar points out that significant fluctuations in channel conditions has created the need for queue stability in the presence of such fluctuations (Col. 1, lines 59-63) and that $c_i(t)$ reflects channel conditions. The applicant concludes that, based on the aforementioned arguments, Stolyar and Mandyam, alone or in combination, do not teach the claimed feature of assigning transmission priorities based on detected rates of change of transmission path conditions. However, Stoyler and Mandyam clearly teach assigning transmission priorities based on detected rates of change by teaching channel quality weights that consider time dependent path fluctuations in scheduling packets. Therefore, Stoyler and Mandyam, alone or in combination, teach the argued limitations.